



## LOUISIANA PUBLIC DEFENDER BOARD MEMO

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To: The Board  
From: Jean M. Faria  
Re: Report of the State Public Defender  
Date: February 11, 2010

Several members of our Board have concluded their terms of office. Pursuant to the terms of the statute, each Board member serves until the respective appointing authority submits a new name to Boards and Commissions or reappoints the member. Members whose terms have expired are Judge William Norris, Remy Voisin Starnes, Luceia LeDoux, Leo Hamilton and Dan Krutz. On behalf of the staff we thank each of you for your dedication, hard work and time. Quite simply, staff cannot do its work without a fully engaged, active and informed Board. Thank you for all that you do.

### **BUDGET**

On December 14, 2009 Budget Officer Buchanan, Deputy Director of Juvenile Services Walker, Information Technology & Management Officer Stilling and the State Public Defender Faria attended an Appeals meeting with the Commissioner of Administration to discuss the need to increase our agency's budget. As a result of the meeting, the Division of Administration/Governor's Office recommended to the Legislature an \$8 million *increase* in our FY 11 budget over our current year. Seven million is intended to go to three districts which are either involved in litigation or are being threatened in hope of addressing existing claims and/or to prevent future lawsuits. Approximately \$.5 million is for a database/case management system and \$.5 million is being transferred to us from the Department of Social Services to provide one time additional funding for indigent parent representation cases.

### **DAF**

The January District Assistance Fund distribution to the districts was made on January 27, 2010 in the amount of \$6,121,957.

### **Grants**

On January 8, 2010 the U.S. Department of Justice finally gave staff approval to begin work on the Capital Case Litigation Initiative (CCLI) training grant in the amount of \$250,000.

JIDAN grant checks in the amount of \$158,900 were received on December 2, 2009 and deposited at the State Treasury for our use in expending funds for this initiative.

Staff continues to struggle with the state restrictions on the receipt and use of private grant monies. Several staff members have voiced support for the creation of a separate foundation to receive and disseminate LPDB awarded grant funds.

### **Capital Contracts**

The financial records and internal controls including segregation of duties of Louisiana Capital Assistance Center (LCAC) were reviewed on December 9, 2009 as part of a larger site visit. Their books were found to be satisfactory and the review over their internal controls including segregation of duties was performed with minor suggestions for improvements.

Staff met in January with the Legislative Auditor and his senior staff to discuss the language of our contracts which will take effect July 1, 2010. Our General Counsel will be incorporating some contract changes on reporting requirements beginning next fiscal year. We hope to have these changes made by March 1, 2010 to ensure continuity of this activity without a lapse of contract services.

### **Budget Committee**

#### **Overhead**

The Budget Committee met in New Orleans on January 14, 2010. One of the major issues discussed was district defender overhead and the districts' responses to the Board Resolution for reimbursement. The Committee directed staff to conduct further research and develop a methodology to determine a fair overhead amount to compensate attorneys who represent indigent defendants pursuant to a court order from their private law offices. Tax returns were too vague without schedules to further breakdown costs included. For example, the term "advertising" with an amount does not reveal what the advertising was for (employment, public notice, etc., if it was for multiple items, whether it was for District Defender work, etc.)

### **Emergency Requests**

The Grant Parish (35<sup>th</sup> JDC) District Defender requested removal of a Board imposed restriction on \$34,425 set aside to retain an investigator. An emergency distribution request was made by St. Bernard Parish, the 34<sup>th</sup> JDC, for \$110,000.

### **CINC Distribution**

CINC distribution in the amount of \$488,305 was requested by the staff's Deputy Public Defender, Director of Juvenile Defender Services, which awaits this Board's approval. Notice was given to the Allen Parish (33<sup>rd</sup> JDC) District Defender to return overhead and unapproved salary back to his local public defender fund, as result of the Board's directive to the staff at its November meeting.

### **CAPITAL DIVISION**

Compliance Officer Di Giulio and support staff, acting in the role of Capital Coordinator, continued the review and approval of expert witness requests.

CO participated in planning sessions for the CCLI grant from the Justice Department for capital training, along with Training Director Kilborn.

Compliance Officer handled several calls for assistance in finding certified counsel in capital cases where conflicts have arisen.

Participation in discussions with SPD, General Counsel, and others involving the content and promulgation of capital guidelines was also part of the work of the Compliance Division since the last board meeting.

## **COMPLIANCE DIVISION**

Compliance Officer, along with Chairman Neuner, General Counsel Harris and SPD Faria, met with representatives of the Attorney General, Governor, Division of Administration, House, and Senate to discuss the pending class action litigation involving the 14<sup>th</sup> JDC, Calcasieu Parish. The presentation included a discussion of the funding needs of indigent representation statewide as well as the prospects of the litigation.

Compliance Officer assisted in preparation for and attended the District Defender Advisory Council meeting where a number of policy issues were discussed, including the issue of overhead payments and policies concerning converting appointed cases to privately retained ones.

Along with Training Director Kilborn and Attorney Tom Lorenzi, and others, Compliance Officer participated in training on file documentation in the 14<sup>th</sup> Judicial District which was attended by attorneys and support staff. The need for proper records in files was stressed in light of systemic litigation in that district.

Compliance division organized interviews of candidates for the position of District Defender in the 26<sup>th</sup> Judicial District (Bossier/Webster). The interviews were conducted by the SPD, both deputies, and participating Board member Rebecca Hudsmith, resulting in a recommendation to be made to the Board that Pam Smart be contracted with for the position.

Compliance Officer made a return site visit to the 27<sup>th</sup> JDC (St. Landry) to assess whether changes had been made resulting from previous visits and recommendations. The District Defender had consulted with the judiciary about early assignment of cases, resulting in changes in case assignment, permitting earlier representation and continuity of counsel. Preliminary hearing practice is still problematic, leaving some clients in jail longer than necessary, as a result of threats from the District Attorney's office to make discovery more difficult. Return visits are planned.

Along with Training Director Kilborn, Compliance Officer attended and conducted Preliminary Hearing Project training in the 9<sup>th</sup> JDC (Rapides) and the 13<sup>th</sup> JDC (Evangeline), as well as the 3<sup>rd</sup> JDC (Union/Lincoln).

Site visits to the 2<sup>nd</sup> (Claiborne, Bienville, Jackson) and 3<sup>rd</sup> (Lincoln, Union) were conducted in conjunction with the Preliminary Hearing Project training.

Compliance Officer Di Giulio and SPD Jean Faria spent several days in New Orleans. The issue regarding case overload continues in the office. The Chief Judge of the district believes that

OPD is functioning at unethical caseload limits. OPD has indicated it will begin pulling its lawyers handling over 150 felony cases out of the rotation until their respective caseloads fall below 150 felonies or its equivalent.

## **JUVENILE PROJECTS**

In December and January, there were three juvenile site visits: the 12<sup>th</sup>, 14<sup>th</sup>, and 24<sup>th</sup> JDCs. State staff attended the Legislative Task Force for Child Protection Cases and handled calls from defenders, Judges, and members of the Implementation Subcommittee to facilitate the transition to the Parent Representation Program statewide in all defender offices that began January 1, 2010. State staff is also assisting the Louisiana Department of Social Services in printing the (LPDB) Handbook for Parents in CINC Cases.

State staff was in attendance at the following meetings and conferences: the Children's Law Committee of the Louisiana State Bar Association, the Office of Juvenile Justice, and the MacArthur Foundation's statewide meeting. In addition, the state staff participated in a JIFF Webinar, gave a presentation to the Women's Philanthropy Network in Shreveport about the need for collaboration between the Juvenile Justice System and the local school districts, and attended oral arguments regarding a delinquency matter at the Louisiana First Circuit Court of Appeals. Juvenile staff participated in the interviews for the new District Defender in the 26<sup>th</sup> JDC and judged the Frederick A. Douglass Mock Trial Competition at LSU. State staff served on a panel at the Louisiana CASA CINC training in Lafayette and met to discuss the Summer Internship Program.

State staff also met with the Louisiana District Attorneys Association regarding proposed juvenile legislation and then attended the most recent Louisiana Law Institute presentation of juvenile legislation. Both the mental health examination protection legislation and presumption of indigence for juveniles (supporting appointment of public defenders for all children who are incarcerated) passed, while juvenile confessions was passed to the next meeting.

Finally, Juvenile Regional Services was awarded a grant from the MacArthur Foundation for \$250,000 over two years. This grant was a collaborative effort between LPDB and JRS. Three juvenile defenders offices, including JRS, in collaboration with state staff, will work to develop protocols for appeals in juvenile court as well as post-disposition representation. This work is in support of the Juvenile Indigent Defense Action Network (JIDAN) grant received by LPDB in 2009.

## **TRAINING**

All of the districts, save three, have had a training session for the districtPDO database. Districts 3 and 19 will have trainings in the near future.

Preliminary Hearing trainings have been scheduled and/or provided in the 9<sup>th</sup> (Rapides / January 14<sup>th</sup>), 13<sup>th</sup> (Evangeline / January 28<sup>th</sup>), and 3<sup>rd</sup> (Lincoln/Union / February 5<sup>th</sup>) districts.

A one-day training for capital defense attorneys, prosecutors and victim assistance staff was provided on December 11, 2009. Presenters, including Richard "Dick" Burr and Pamela Blume Leonard, discussed ways to effectively open communication lines between victim survivors and defense teams to provide information and assist in the healing process for victims.

Part I of the trial skills pilot project training was held on December 12, 2009, with 30 attorneys and 11 investigators from the 19<sup>th</sup> District Defender Office attending. This Part covered the initial client interview, bond hearings, and preliminary examinations. Parts II and III are being developed for April 10<sup>th</sup> and June 19<sup>th</sup>, respectively.

A training for public defender office leadership is scheduled for March 12-13, 2010 in Baton Rouge. Titled *Supervision & Management: Defender Leadership Training*, the two half-day course will be an interactive training for District Defenders, program managers, attorney supervisors and office leaders. A similar, single-day training for the Capital Post Conviction Project of Louisiana was provided on February 6, 2010.

Additional trainings being developed for 2010 include: a Daubert workshop, tentatively scheduled for May 2010; a fact investigators training, tentatively scheduled for July 19-20, 2010; several juvenile defender trainings; and the Defender Training Institute scheduled for September 12-18, 2010. Also, through the Capital Case Litigation Initiative grant provided by the Bureau of Justice Assistance, two confidential, bring-your-own-case capital defense trainings are being developed for June, 2010 and early Spring, 2011, as well as two prosecutor trainings (not yet scheduled), and a one-day joint conference for capital defenders and prosecutors to be held in late Fall, 2010.

## **SPECIAL PROJECTS**

Over the past two months, the Special Projects Advisor Hall has worked intensively to initiate the Capital Case Litigation Initiative grant award from the Office of Justice Programs at the Department of Justice. These activities include: brainstorming training, modifying the budget, hiring administrative staff, attending day-long training in Washington, DC, registering appropriate points of contact, facilitating the lifting of special conditions, submitting timely progress reports and participating, with Director of Training Kilborn, in numerous collaborations with Dale Lee (ADA in East Baton Rouge) and designated LDAA collaborator.

The Special Projects Advisor advances the completion of the website for official launch in late-February. These activities include: writing content, overseeing custom page design, testing site infrastructure/code and supervising accordance with contract.

LPDB began circulating its bi-monthly newsletter on January 4, 2010. The newsletter is released on the first and third Monday of every month, and has a distribution list of over 900 members including Board Members, all LPDB staff, contract program staff and all employees of a public defender system (District Defenders, assistant defenders, managers, investigators, social workers and support staff). Each newsletter features relevant news (local and national), accomplishments in the field, upcoming training and defender spotlights. There is capacity to monitor readership, which is disappointing at present (about 33%), and LPDB is working to encourage a better “read-rate”.

LPDB is receiving increasing requests from the field to provide a vehicle that allows assistant defenders better access to LPDB staff. Special Projects Advisor has reached out to several of these defenders and has been assigned the task of supporting an Assistant Defender Advisory Council (ADAC). The ADAC is scheduled to have an introductory meeting in Baton Rouge on February 26, 2010.

The Special Projects Advisor and Director of Training are working with NLADA to implement two OSI-funded trainings in Louisiana, addressing cultural competency. These trainings are tentatively scheduled July 16 and 30, 2010, in Lafayette and Ruston, respectively.

Through the work of the Special Projects Advisor, LPDB is co-sponsoring a community service event with the Orleans Public Defenders and Office of Defender Services (who are in New Orleans for training) on March 20, 2010. The event is a collaboration between our defender sponsors and the Central City Comeback Committee and will include service learning with G. Okyeame Haley and two Central City area-exonerees. Appropriate media work will also be done around this event.

On Saturday, January 23<sup>rd</sup>, the Louisiana State Bar Association approved a resolution in support of language access guidelines for district courts in Louisiana. LPDB, through State Public Defender Faria and Special Projects Advisor Hall, serves on a broad-based Language Access Committee to advance this important protection for non-English speaking and/or deaf clients. Since approved by LSBA, the model guidelines are being developed for presentation for the Louisiana Supreme Court in the next several weeks.

The Special Projects Advisor continues to monitor the juvenile list-serv, approving posts, recruiting contributions and managing members. Special Projects Advisor Hall helped develop the preamble for the Annual Report and create a summary of post-Public Defender Act accomplishments at the request of Senator Lydia Jackson. She also supported the development of the presentation on post-conviction representation before the Supreme Court Task Force on January 22, 2010. Finally, the Special Projects Advisor continues to support the Plaquemines Defender Services Program through weekly staff meetings, client updates, communication with District Defender Barbee and other contact as needed.

### **Information Technology & Management Office**

December 2009 marked the conclusion of a six-month database training/user satisfaction survey tour covering 39 of the 42 districts conducted in close collaboration with the Training Office staff. The training portion of the visits concerned proper operation of the database at the district level. In the user-satisfaction portion of the visits, ITM and Training Staff solicited users' feedback and suggested changes to the database including changes to existing functionalities as well as additional features not yet on the database. This research helped to identify features to be included in an RFP for the new database. Importantly, since the last Board meeting, the \$495,000 first-year budget for the new database has been approved by the Governor and recommended to the legislature for funding.

Through an LCLE grant, several databases have been tested online and site visits to other states have been identified, out-of-state travel to commence in March. ITM staff also conducted a three-day tour of several district defender offices with Dr. David Newhouse, a nationally renowned criminal justice database expert, whereupon he issued a concise report critiquing the current database and identifying critical functionalities not currently available on the database. These suggestions also will be included in an RFP for the new database.

The ITM office also produced an attorney and chief salary/earnings survey of public defender systems in the Southeastern United States and is presently conducting research on overhead formulae and policies or regulations in neighboring states.

Finally, based on January-December 2009 data from the 2009 district office survey received on or near January 15, 2010, the ITM staff performed the calculations to determine the DAF amounts, conducted the shortfall-surplus projects and then applied the DAF Adjustment formula (approved by the Board in December 2009) on January 27, 2010. The same January 15<sup>th</sup> survey data were used to compile an approximately 700-page annual report to the legislature which was completed and delivered to the requisite legislative committees by the February 1st due date.

The ITM Office also developed a catalogue of each District Defender Office inventory of hardware and software and an analysis of each district public defender salary averages for public defense work in relation to a forty-hour work week.

## **STAFF UPDATE**

There have been several changes on staff. Anne Gwin is now Executive Assistant to the SPD; Karen Plaisance is John Di Giulio's paralegal in the Capital and Compliance Divisions; Sherri Young is General Counsel Roger Harris' paralegal.

Staff strategic planning will be held on February 23 and 24, 2010.

## **GENERAL**

A great deal has happened over the last two months, despite the holidays. Several of us were ill. The District Defender Advisory Committee meeting scheduled for January 7, 2010 was rescheduled to January 13, 2010 where Compliance Officer Di Giulio and the SPD talked about the overhead issues and the policy of each district defender regarding accepting indigent clients as paying clients. The need for a Policy Committee to the Board grows with every development in the field.

Information about the Board and its work, particularly in the area of state post-conviction was presented to the Louisiana Supreme Court Task Force on January 22, 2010. Board members Hudsmith and Boren provided additional information.

The SPD presented two resolutions to the Louisiana State Bar Association House of Delegates at the Annual Meeting in New Orleans on January 23, 2010. One is a resolution by the Bar supporting the reclassification of non-violent misdemeanors, to be selected in conjunction with the district attorneys. The second resolution states that the organized bar supports that the retention of the funding associated with reclassified misdemeanors remains in the criminal justice system as those funds are currently parceled out. Second Circuit Court of Appeals Judge Milton Moore, Chair of the Right to Counsel Committee and Board Member Jim Boren were present for questions and offered their support.

In compliance with the terms of our federal grant regarding a case management system, the SPD visited the Defender Association in Seattle to see how one of the older case management systems works. While there she participated in an evaluation of four contract public defender programs in King County.

The February 1st Report to the Legislature was transmitted timely to the appropriate committee chairs and the President of the Senate and the Speaker of the House. The Report to the Joint Legislative Committee on the Budget is due on March 1<sup>st</sup>, two days before staff testifies before

House Appropriations. That is the same date and time staff must testify before the Civil Service Commission regarding the Capital Case Coordinator position.

The Sentencing Commission, to which the SPD has been appointed, will be starting its work shortly and an informal get together has been convened on February 9, 2010.

Mr. Neuner and the SPD will present at the U. S. Department of Justice's National Symposium on Indigent Defense scheduled to be held in Washington, D.C., February 18-19, 2010.

The following Monday, February 22, 2010, Mr. Neuner and members of the staff will meet with newly appointed Executive Counsel, Mr. Stephen Waugespack, and Deputy Executive Counsel, Elizabeth Murrill.

Staff has begun work on coordinating the meeting with the Legislative Auditor, Sheriffs' Association, Police Jury Association, Louisiana Municipal Association, LPDB members and staff.

Have a Safe and Happy Mardi Gras.